



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/052,949	01/17/2002	Carolyn Jean Cupp	112701-332	3984
29157	7590	01/27/2004		
BELL, BOYD & LLOYD LLC P. O. BOX 1135 CHICAGO, IL 60690-1135				
			EXAMINER HENDRICKS, KEITH D	
			ART UNIT 1761	PAPER NUMBER

DATE MAILED: 01/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

10/052,949

Applicant(s)

CUPP ET AL.

Examiner

Keith Hendricks

Art Unit

1761

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 18 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_.

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☒ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: see continuation sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: 9 and 31.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: 1-8, 10-30 and 32.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

## ATTACHMENT TO ADVISORY ACTION


Initially, in the response of 12-18-03, applicant states that they have canceled claims 1-7 and 14-28. However, this was neither formally requested at any point in applicants' submission, nor is it reflected in the Listing of Claims submitted at said date.

Furthermore, the claims do not comply with 37 CFR 1.121, in that the amendments to which applicants refer in their response, are not reflected in the claims themselves. As stated in the revision to 37 CFR 1.121 as of July 2003, "all claims being currently amended shall be submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims." Applicants have stated that they have amended certain claims to overcome the rejection under 35 USC 112, 2<sup>nd</sup> paragraph; however, this is not apparent from the claims since they were not presented in the proper format.

It is also noted that a simple cancelation of claims 1-7 and 14-28 would improperly leave certain claims dependent upon canceled claims.

If the amendment was entered, the application would stand with certain claims in allowable condition, and others still rejected. The period for reply to the Final Rejection has expired, and applicants did not file a Notice of Appeal. However, whether the amendment was entered or not, the application is not in allowable condition, and thus the status of the application is ABANDONED. An examiner's amendment would not have been possible at this time, since the period for response has expired.

The Terminal Disclaimer filed 12-18-03 has been entered, and thus the double-patenting rejection of claims 1-32 has been overcome.



KEITH HENDRICKS  
PRIMARY EXAMINER